JD(SF)-50-10
Tualatin, Oregon

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES SAN FRANCISCO

SABO, INC., d/b/a HOODVIEW VENDING CO.

and **Case 36-CA-10615**

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS UNION, AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Helena A. Fiorianti, Atty., for the General Counsel.
Thomas M. Triplett, Atty. (Schwabe, Williamson & Wyatt), of Portland, Oregon, for the Respondent.
Paul Cloer, Organizing Coordinator, of Portland, Oregon, for the Charging Party.

DECISION

Statement of the Case

LANA PARKE, Administrative Law Judge. Pursuant to charges filed by Association of Western Pulp and Paper Workers Union, affiliated with United Brotherhood of Carpenters and Joiners of America (the Union), the Regional Director of Region 19 of the National Labor Relations Board (the Board) issued an amended complaint and notice of hearing (the complaint) on August 25, 2010. The complaint alleges that SABO, Inc., d/b/a Hoodview Vending Co. (the Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). This matter was tried in Portland, Oregon, on September 21-22, 2010.[1]

I. Issue

Did the Respondent violate Section 8(a)(3) and (1) of the Act by terminating employee LaDonna George because of her union or other concerted protected activities and/or to discourage employees from engaging in union or other concerted protected activities.

II. Jurisdiction

At all relevant times, the Respondent, an Oregon corporation, has been engaged in the business of providing vending and coffee services with an office and place of business in Tualatin, Oregon. During the 12-month period preceding the complaint, which period is representative of all material times, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Tualatin

[1] All dates are 2010 unless otherwise specified.

facility goods valued in excess of $50,000, directly from points located outside Oregon. I find Respondent has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, the Union has at all relevant times been a labor organization within the meaning of Section 2(5) of the Act.

Findings of Fact

Unless otherwise explained, findings of fact are based on party admissions, stipulations, and uncontroverted testimony regarding events occurring during the period of time relevant to these proceedings. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I find the following events occurred in the circumstances described below during the period relevant to these proceedings:

The Respondent stocked snacks and fresh food items in vending machines located at the premises of various business facilities throughout southwest Washington and northwest Oregon. At all material times the following individuals held the positions set forth and have been supervisors and/or agents of the Respondent within the meaning of the Act:

Robert Hill (Mr. Hill)	President
Sally Hill (Mrs. Hill)	Secretary

On March 10, 2009, Subregion 36 conducted an election in a unit of the Respondent's route drivers, technicians, and route supervisors. The tally of ballots showed that four employees had voted for the Union and four employees had voted against the Union with two challenged ballots. The Union filed timely objections to the election.

By letter dated June 11, 2009, addressed to Mr. and Mrs. Hill, the Union notified the Respondent that the following employees had agreed to serve on the Union's organizing committee:

Dwight Covington (Mr. Covington)	Keith Neary (Mr. Neary)
Gary Dalton	Mark Ritchie
LaDonna George (Ms. George)[2]	Kristopher Stover

On August 27, 2009, the Respondent and the Union entered into a stipulation to set aside the March 10, 2009 election and hold a new election. On the same date, the Respondent entered into a settlement agreement of unfair labor practices alleged in Cases 36-CA-10438, 36-CA-10470, and 36-CA-10481. On December 31, 2009, the Region approved the Union's request to withdraw the representation petition Case 36-RC-6454.[3]

On February 19, 2009, Ms. Hill conducted an employee meeting at the Respondent's facility. According to Mr. Covington who worked for the Respondent as a route driver until he resigned his employment in August 2009, Ms. Hill said, inter alia, that the Company would not bargain with the Union if the Union got in and that the Union would find the Respondent to be the hardest employer they ever dealt with. Mr. Covington could not recall anything else said at

[2] In November 2009, Ms. George ceased being a route supervisor and became a route driver. The parties stipulated that from November 2009 through the date of her discharge, Ms. George was not a supervisor within the meaning of the Act.

[3] The Union withdrew its petition because it believed it had lost employee support.

the meeting. Under cross-examination, Mr. Covington testified that Ms. Hill read to employees from a document, saying she was embarrassed to do so but that she needed to read everything on advice of counsel.[4] Mr. Covington also recalled that Ms. Hill said nobody could make the Respondent pay more than it could afford.

Ms. Hill testified that on February 19, 2009, she read to employees a document entitled "First Speech to Employees for Election 2-19-09," which included the following references to collective bargaining:

> If, by some unfortunate mistake, the Union wins this election, all we have do to is bargain in good faith-which of course we would do. But, legally, we do not have to agree to anything. The union would find us the toughest employer they have ever come up against. We would deal hard, and we would deal at arm's length.
>
> Nobody can get us to pay more than we can afford. Not with a negotiation—not with a picket sign—it will not happen.
>
> We believe that we do not have the moral right to force our people to join a union in order to work here. I guarantee you that if the Union wins this election and we bargain with them, this will very quickly become the number one issue. I don't know what the Union could offer us to get us to change our minds, but we would not be surprised to see them offer pay and benefits cuts to get us to agree to force you to pay them money to work here. If we do not agree to their proposal to force you to pay them money, they would probably strike.

Mr. Covington's testimony of what Ms. Hill allegedly said in the February 19 meeting lacks context, and it is impossible to determine whether his testimony was a specific recollection of what Ms. Hill said or whether it reflected inferences he perhaps unwarrantedly drew. Further, Mr. Covington corroborated Ms. Hill testimony that she read from a prepared document in addressing employees, as did Ms. George. I credit Ms. Hill's account of what she said at the meeting, and I find that the above excerpts from the document she read from accurately reflect the statements she made about future bargaining with the Union.[5]

On March 5, 2009 in Mr. Hill's office, Mr. and Ms. Hill met with Mr. Covington to discuss his paycheck. According to Mr. Covington, Ms. Hill told Mr. Covington that if employees selected the Union as their representative, the Company would no longer observe the past practices of permitting flextime, paying for benefits, or providing work between 6 p.m. and 6 a.m., and would institute a mandatory employee meeting every morning at 6 a.m. Mr. and Ms. Hill denied that Ms. Hill told Mr. Covington union representation would bring the stated changes. Rather, Ms. Hill testified that she reminded him that although a competitor had a fixed 6 a.m. starttime, the Respondent gave its drivers worktime flexibility.[6]

Mr. Covington testified that after Ms. Hill left the office, he asked Mr. Hill about a former incentive program called the "Ironman Award," to which Mr. Covington believed he was entitled.

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[4] Ms. George also recalled that Ms. Hill read from a paper during the meeting but was vague about what she said.

[5] I find the statements were not unlawful and do not reflect union animus.

[6] I found Mr. Covington's testimony in this regard to be clear, specific, and truthful. I credit his account of what Ms. Hill said.

Mr. Hill told Mr. Covington the Ironman Award would be contingent on the upcoming March 10, 2009 union election.[7]

Following the March 10, 2009 unsuccessful union election, the Respondent posted a sign at its facility stating, "THANK YOU. Bob and I are grateful to our loyal employees." The sign included the handwritten words, "Thanks so much, Sally," and "Thanks for your support, Bob." A week or so later, Ms. Hill told Mr. Covington that "no matter what [he] told [his] little friend at the Union, [the Respondent was] going to run the company how they wanted to through the down economy." She added that if employees "wanted to run to the Union like a bunch of rats," that was fine, but the Company was still going to do things the way they wanted.

On Wednesday, January 6, at 10:40 p.m., while off work, Ms. George was notified that her father had unexpectedly passed away. Ms. George attempted to inform Mr. and Ms. Hill by telephone, leaving at least one message on the company phone line. On Friday morning, January 7, Mr. Hill telephoned Ms. George, expressed sympathy for her loss, and asked when she expected to return to work. Ms. George said she would return to work the following Monday, January 11. Ms. George and her family arranged for a cremation "placement ceremony" to be held on Thursday, January 14, after Ms. George completed her workday.

On Monday, January 11, Ms. George returned to work and worked through Thursday, January 14. As she finished her route on January 14, Ms. George asked Ms. Hill if she could have off the following Monday and Tuesday, January 18 and 19. Ms. Hill told Ms. George to turn in a written request on a vacation form and she would look into it. Ms. George filled out the vacation request, as instructed. The following day, Friday, January 15, when Ms. George reported for work at about 5:00 a.m., she found that Ms. Hill had replied to her vacation request by returning the form with the following written on it: "Sorry—We do not have anyone to do your route. We have a driver in training but not ready yet. Sally."

Upset that her leave request had been denied, Ms. George balled up the vacation request form. As Ms. George prepared to work her route, she grew more agitated and emotional and determined that she was not able to work or drive. She wrote the following note on the vacation request form that Ms. Hill had returned to her and slipped the form under Mr. Hill's office door: "I just buried my father yesterday and I am not in a condition or state of mind to be driving or working right now. Sorry LaDonna." Ms. George then left work without notifying any supervisor.

That same morning Mr. Hill found Ms. George's vacation-request-form note on his office floor. At 7:15 a.m., Mr. Hill telephoned Ms. George's personal cell phone number and left the message, "LaDonna, please call the office. We want to know where you're at." Sometime that day, Ms. George noticed that Mr. Hill had attempted to telephone her, but she did not return the call. Later that day, Ms. George received an e-mail from Ms. Hill dated January 15 with an attached memorandum that stated, in pertinent part:

[7] Ms. Hill testified the Ironman Award was an incentive program that had been discontinued in 2006. The asserted nonexistence of the award does not, of course, resolve the question of whether Mr. Hill made the statement attributed to him by Mr. Covington. Although Mr. Hill denied making the statement, I found Mr. Covington's testimony of what Mr. Hill said in regard to the Ironman Award to be clear, specific, and truthful; I credit his account.

> Today you left work without notice and without informing anyone, leaving Hoodview Vending without anyone to service your accounts. When we tried to call you, you did not respond or make any attempt to call us back.
>
> You are expected to be at work and on time to do your job, Monday morning January 18, 2010, or you will be terminated.

On the same day, Ms. Hill issued a memorandum dated January 15 at 4:13 p.m. to Ms. George regarding a failure to service an account by the customer-specified time of 8:30 a.m. The memorandum stated, in pertinent part, "Your decision to service [the customer account] at noon on Monday upset [the customer] and he called to remind us, once again, that we must be there by 8:30 a.m."

On Monday, January 18, Ms. George reported to work. While preparing for her route, she had a conversation with two employees, Steve Boros (Mr. Boros) and Mr. Neary (the George/Boros conversation). After a brief inconsequential exchange with Mr. Boros and Mr. Neary, Ms. George asked Mr. Boros if he had noticed on an unemployment website that a job was posted for a vending route driver in Tualatin, Oregon. Knowing that only two vending companies, the Respondent and S&S Vending, were located in Tualatin, Ms. George said she did not believe the posting was for S&S Vending because they did not go through as many employees as the Respondent. Ms. George and Mr. Boros discussed their belief that the posting meant the Respondent was going to fire a route driver. According to Mr. Boros, Ms. George asked who Mr. Boros thought the employee would be. Although Mr. Boros could not recall specifically what Ms. George said, he believed she "insinuated" that he was going to be fired. Ms. George denied telling either Mr. Boros or Mr. Neary that the Respondent was going to replace either of them or fire any employee.

When he finished his route later that day, January 18, Mr. Boros asked Mr. Hill if the Respondent was going to fire him. Mr. Hill said no and asked what made him ask that. Mr. Boros told Mr. Hill that Ms. George had told him he was going to be fired. Mr. Hill assured Mr. Boros he would not be fired, adding that Ms. George would be fired because she had left work without notice. Immediately after his conversation with Mr. Hill, Mr. Boros spoke with Ms. Hill in her office. Mr. Boros asked if he were going to be fired. Ms. Hill said no and asked where he had gotten the idea. Mr. Boros said he had seen the internet job posting and Ms. George had told him he would be fired.

On January 18 at about 4:30 p.m., at Ms. Hill's request, Ms. George met with Ms. Hill in her office. According to Ms. George, Ms. Hill asked her why she was stirring things up. Ms. George said she did not know what Ms. Hill was talking about. Ms. Hill asked Ms. George why somebody had asked Ms. Hill if he was going to be fired. Ms. George said she had no clue.[8] Following her meeting with Ms. George, Mr. and Ms. Hill decided to terminate her. According to Ms. Hill, the decision was based on Ms. George's long history of violating company

[8] Ms. Hill testified that Ms. George denied telling anyone that he was going to be fired but claimed that every employee was looking for a job. When Ms. Hill told her not to spread lies about things she knew nothing about, Ms. George became upset. Saying, "I can't deal with this," she walked out of Ms. Hill's office. It is unnecessary to resolve credibility between the two versions, as Ms. Hill and Ms. George's accounts do not differ in any material point.

rules,[9] uncooperativeness, not responding to calls both as a supervisor and as a driver, failure to service accounts, walking off the job without communicating that she would not be there, which led the Hills to feel they could not rely on her, and telling Mr. Boros he was going to be fired.[10]

Later, after Ms. George finished her route, Ms. Hill called her into Mr. Hill's office. Ms. Hill handed Ms. George an envelope containing her paycheck and told her that it was her last day there because she was untrustworthy.

On the following day, Ms. Hill addressed an assembled group of route drivers, telling them that she was tired of the behind-the-back talk in the warehouse, with everybody talking behind everybody's back instead of talking to Mr. and Ms. Hill if they had a problem with somebody. She told the group that the Respondent had fired Ms. George for gossiping and spreading rumors, telling people they were going to be fired.[11]

III. DISCUSSION

A. Legal Principles

Section 7 of the Act assures employees the right to engage in union activities and other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Section 8(a)(1) of the Act provides: "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Section 8(a)(3) of the Act provides that it shall be an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

In termination cases turning on employer motivation, the Board applies an analytical framework that assigns the General Counsel the initial burden of showing that union activity was a motivating or substantial factor in an adverse employment action. The elements required to support such a showing are union activity by the employee, employer knowledge of that activity, and employer animus toward the activity. If the General Counsel meets the initial burden, the burden then shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's protected activity. *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Alton H. Piester, LLC,* 353 NLRB 369 (2008).

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[9] In May 2009, the Respondent issued two written warnings and a memorandum (considered an admonition and not discipline) to Ms. George, the last of which was dated May 28, 2009.

[10] Of the reasons given, it is clear that the paramount grounds were Ms. George's unanticipated and unexcused cessation of work on January 15 and her prediction of discharge to a coworker. In response to counsel for the General Counsel's question whether the sole reason for Ms. George's termination was her telling Mr. Boros that he was going to be fired, Ms. Hill testified, "No, it was for walking off the job and telling him he was going to be fired." In later testimony, Ms. Hill said that she did not know if the Respondent would have fired Ms. George if her conversation with Mr. Boros had not occurred.

[11] The complaint did not allege that Ms. Hill's statements at this meeting violated the Act.

B. LaDonna George's Discharge as an Alleged Violation of Section 8(a)(3) of the Act

The General Counsel contends that the Respondent fired Ms. George because of her activities in support of the Union. The General Counsel argues that the reasons put forth by the Respondent—Ms. George's poor performance, unannounced and unauthorized departure from work on January 15, and assertion to a coworker that he would be fired—were mere pretexts for antiunion discrimination.

The Respondent does not dispute that the General Counsel has met the first two elements of the *Wright Line* burden as to the discharge of Ms. George. Uncontroverted evidence shows that Ms. George engaged in union activities of which the Respondent was aware. As to the third element—the existence of employer animus toward Ms. George's union activities—there is no direct evidence. However, both Mr. and Ms. Hill demonstrated animus toward employee union support generally when they, respectively, told Mr. Covington that continuation of the Ironman incentive award depended on the outcome of the union election and that if employees opted for union representation, the Respondent would adversely alter certain past practices, including flextime and benefit payment. Further animus was demonstrated by Ms. Hill's postelection pejorative statement to Mr. Covington that even if employees ran to the Union "like a bunch of rats," the company would conduct its business as it wanted. The General Counsel has established that the Respondent had the union animus required by the third element of the General Counsel's *Wright Line* burden. The evidentiary burden shifts, therefore, to the Respondent to prove, as an affirmative defense, that it would have discharged Ms. George even in the absence of employees' union activity, in which she had been predominantly involved.

The Respondent argues that even assuming the General Counsel carried the initial *Wright Line* burden, the Respondent has shown it would have discharged Ms. George notwithstanding her or other employees' union activity (1) because she engaged in the unprotected activity of leaving work without notice on January 15 and (2) because she unwarrantedly caused a coworker to believe he was about to be fired.[12]

As to the Respondent's first asserted reason for discharging Ms. George—her January 15 job-abandonment—the General Counsel does not contend that Ms. George's unauthorized departure from work was protected under the Act or that it did not constitute misconduct that reasonably justified discipline. Rather, the General Counsel argues that the Respondent implicitly excused Ms. George's January 15 misconduct and that its attempt to raise the misconduct as a defense shows pretext. Although Ms. George complied with Ms. Hill's order to return to work on January 18 or face termination, it does not inevitably follow, and there is no evidence, that the Respondent considered Ms. George's return-to-work to have corrected her misconduct. There is no evidence the Respondent did not intend to discipline Ms. George for her misconduct; in fact, Mr. Hill's January 18 statement to Mr. Covington that Ms. George would be fired because she had left work without notice, as well as Ms. Hill's January 15 memorandum to Ms. George admonishing her about her failure to service a customer account that day, suggest quite the contrary. I cannot, therefore, find that the Respondent's reliance on Ms. George's January 15 job-abandonment as a basis for her discharge was, as the General Counsel argues, pretextual.

[12] I do not address Ms. George's prior work record. As noted earlier, I find her past discipline/admonitions did not form any material basis for her discharge.

The Respondent could reasonably view Ms. George's abandonment of her job as a serious offense, and it is not the role of the administrative law judge to second guess the degree of discipline an employer chooses to impose on an offending employee. Inasmuch as Ms. George engaged in serious misconduct on January 15 by leaving work without permission, and as there is no evidence the discipline meted to Ms. George was patently out of line with customary discipline or motivated by unlawful considerations, the Respondent has met its burden of proving that it would have discharged Ms. George even in the absence of employees' union activity.

The Respondent's second asserted reason for discharging Ms. George was its disapproval of her January 18 George/Boros conversation, which resulted in Mr. Boros telling Mr. and Ms. Hill that Ms. George had told him he was going to be fired. As to this reason, the General Counsel has not shown that Ms. George's January 18 conversation had anything to do with union activity, that antiunion animus in any way motivated the Respondent's reaction to the incident, or that the Respondent seized upon the incident to retaliate against Ms. George for her union adherence. Rather, the evidence demonstrates that the Respondent was genuinely displeased about Ms. George's reported statement to Mr. Boros and concerned that Mr. Boros had been upset by it. The Respondent's second reason for discharge is, therefore, appropriately considered under the General Counsel's alternate theory that the Respondent discharged Ms. George in violation of Section 8(a)(1) of the Act.

C. LaDonna George's Discharge as an Alleged Independent Violation of Section 8(a)(1) of the Act

As to the Respondent's second asserted reason for discharging Ms. George, the General Counsel's theory of violation rests on *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23 (1964).[13] In *Burnup & Sims*, the Supreme Court held:

> [Section 8(a)(1) of the Act] is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct.

The General Counsel argues that the George/Boros conversation constituted concerted protected activity, that the Respondent knew it was concerted protected activity, and that the Respondent disciplined Ms. George for alleged misconduct arising out of the activity. The General Counsel asks that the burdens allocated by *Burnup & Sims (U.S.)* be applied.

Burnup & Sims (U.S.) is not entirely apposite to this matter. *Burnup & Sims (U.S.)* dealt with a situation in which alleged employee misconduct, for which the employee was disciplined, occurred during the course of known concerted protected activity but was not itself protected activity. Here, the General Counsel argues that the George/Boros conversation was concerted and protected, while the Respondent contends the conversation was not only unconcerted and unprotected but that it constituted misconduct in and of itself. That is a different scenario from the *Burnup & Sims (U.S.)* facts. The more appropriate analysis is directed by Board cases that address situations where the conduct for which an employee is disciplined is itself concerted

[13] In order to avoid confusing the Supreme Court case with *Burnup & Sims, Inc.,* 256 NLRB 965, 976 (1981), cited hereafter, I refer to the Supreme Court case as *Burnup & Sims (U.S.).*

protected activity. See *CGLM, Inc.,* 350 NLRB 974 fn. 2 (2007), quoting *Meyer Industries*, 268 NLRB 493, 497 (1984) (an employer independently violates Sec. 8(a)(1) of the Act if, "'having knowledge of an employee's activity, it takes adverse employment action that is 'motivated by the employee's protected concerted activity'"); *Burnup & Sims, Inc.,* 256 NLRB 965, 976 (1981) (an employee's discipline independently violates Sec. 8(a)(1) of the Act, without regard to the employer's motive, and without regard to a showing of animus, where "the very conduct for which [the] employee [is] disciplined is itself protected concerted activity"). However, under either approach, the existence or lack of animus is not relevant as the Respondent's adverse employment action against Ms. George was admittedly motivated, in major part, by the George/Boros conversation.

Since the Respondent's adverse employment action against Ms. George was based, in significant if not major part, on her role in the George/Boros conversation, the first step under either a *CGLM, Inc.* or a *Burnup & Sims (U.S.)* analysis is to determine whether the target activity—the George/Boros conversation—was concerted and protected. The General Counsel bears the burden of establishing that the George/Boros conversation constituted concerted protected activity.

Conversations between or among employees may constitute concerted activity under certain conditions. The conditions were stated by the court in *Mushroom Transportation Co. v. NLRB,* 330 F.2d 683, 685 (3d Cir. 1964)*,* and adopted by the Board in *Meyers II*, 281 NLRB 882, 887 (1986):

> It is not questioned that a conversation may constitute a concerted activity although it involves only a speaker and a listener, but to qualify as such, it must appear at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees.

The court further distinguished unconcerted from concerted conversation,[14] which distinction the Board adopted in *Daly Park Nursing Home,* 287 NLRB 710, 710-711 (1987):

> If [the conversation's] only purpose is to advise an individual as to what he could or should do without involving fellow workers or union representatives to protect or improve his own status or working position, it is an individual, not a concerted activity, and, if it looks forward to no action at all, it is more than likely to be mere griping.

Here there is no evidence that Ms. George, Mr. Boros, or Mr. Neary, in speculating about the origin and ramifications of an internet job posting, contemplated taking any action regarding the job posting or its theoretical consequences. There is also no suggestion that any of the three employees proposed giving mutual aid or protection to any employee supposedly targeted by the Respondent for discharge. Since the George/Boros conversation looked forward to no action whatsoever, under the Board's reasoning in *Daly Park,* the George/Boros conversation was mere conjectural grousing and not concerted activity.

Cadbury Beverages,[15] and *Jhirmack Enterprises,*[16] cited by counsel for the General Counsel, are distinguishable, as the activity involved in each case contemplated future protected action. In *Cadbury Beverages,* an employee engaged in concerted protected activity

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[14] 330 F.2d at 685.

[15] 324 NLRB 1213 (1997), enfd. 333 U.S. App. D.C. 94 (D.C. Cir. 1998).

[16] 283 NLRB 609 fn. 2 (1987).

on behalf of another employee by cautioning another employee against representation by an assertedly untrustworthy union representative, conduct that contemplated future protected action. In *Jhirmack,* an employee engaged in concerted protected activity when, motivated by a desire to protect a fellow employee's employment, she advised a coworker that other employees had complained to management about his slow job performance that affected general employment conditions. The warning contemplated future work-related action by the warned employee.

Since there is no evidence that the George/Boros conversation was anything more than an exchange of speculative employee opinions or that its purpose, explicit or implicit, was to initiate or to induce or to prepare for group action, I cannot find that it was concerted activity entitled to protection under Section 7 of the Act.

IV. Conclusion

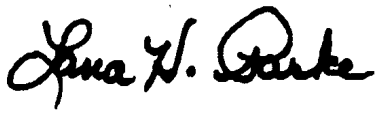
Having found the Respondent did not unlawfully discharge Ms. George for leaving work without notice on January 15 and/or for engaging in unconcerted conduct on January 18, the complaint shall be dismissed in its entirety.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The complaint is dismissed.

Dated: Washington, D.C. November 30, 2010



Lana H. Parke
Administrative Law Judge

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.